1999

Wesley John Harlan v. Bonnie Kathleen Harlan : Reply Brief

Utah Court of Appeals

Mary C. Corporan; Corporan and Williams; Attorneys for Appellant.
Clark B Allred; McKeachnie, Allred, McClellan and Trotter; Attorneys for Appellee.

IN THE UTAH COURT OF APPEALS

WESLEY JOHN HARLAN,	:	
Petitioner/Appellee,	:	CASE NO. 990011 - CA
vs.	:	
BONNIE KATHLEEN HARLAN,	:	
Respondent/Appellant.	:	PRIORITY NO. 15

REPLY BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT AND ORDER OF THE
EIGHTH JUDICIAL DISTRICT COURT,
DUCHESNE COUNTY, STATE OF UTAH,
THE HONORABLE JOHN R. ANDERSON, PRESIDING

MARY C. CORPORON #734
Attorney for Appellant
CORPORON & WILLIAMS, P.C.
808 East South Temple
Salt Lake City, Utah 84102
Telephone: (801) 328-1162

CLARK B. ALLRED
Attorney for Appellee
MCKEACHNIE, ALLRED & MCCLELLAN
855 East 200 North (112-10)
Roosevelt, Utah 84066
(435) 722-3928

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Attorney for Appellee
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Appellant, BONNIE HARLAN, hereinafter "Ms. Harlan" or "Wife", submits the following Reply Brief:

ARGUMENT

I. MS. HARLAN DID NOT FAIL TO MARSHAL THE FACTS IN SUPPORT OF THE TRIAL COURT'S FINDINGS OF FACT WITH REGARD TO THE TRIAL COURT'S RULING ON HER 60(b) MOTION.

Mr. Harlan first argues that Ms. Harlan failed to marshal the facts that support the trial court's ruling on Ms. Harlan's 60(b) motion.

The general rule on appeal is that "[t]o overturn a trial court's finding of fact 'an appellant must first marshal all the evidence supporting the findings and demonstrate that, even if viewed in the light most favorable to the trial court, the evidence is legally insufficient to support the findings.'"

Bailey-Allen Co., Inc. v. Kurzet, 945 P.2d 180, 186 (Utah App. 1997) (quoting Coalville City v. Lundgren, 930 P.2d 1206, 1209 (Utah App. 1997) (quoting Doelle v. Bradley, 784 P.2d 1176, 1178 (Utah 1989)), cert. denied, 939 P.2d 683 (Utah 1997).

In the present case, neither findings of fact were entered in regard to Ms. Harlan's 60(b) motion, nor was there a hearing on the motion. Therefore, there was no evidence to marshal in support of the absent findings.

Mr. Harlan also argues that Ms. Harlan "failed to inform this Court of her objection's to the court's Ruling where she agreed that there were errors in the addition and debt calculations..." (Appellee Brf. P. 11-12). This statement is offered without any cite to the record and as an attempt to support Mr. Harlan's argument that Ms. Harlan agreed with the lowering of the value of the business from the Ruling to the Findings drafted by Mr. Harlan. It is axiomatic that "if counsel on appeal does not provide citations to the record, we need not reach the merits of his or her substantive claims." State v. Ortiz, 782 P.2d 959, 962 (Utah App. 1989) (citing Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 969 (Utah App. 1989). Therefore, Mr. Harlan's unsupported claims may be ignored on appeal.

Ms. Harlan, *pro se*, did argue that the calculations in the Ruling valuing the business at $195,735 were in error. (Respondent's Response to Ruling, Appellee Apdx. IV). However,

contrary to Mr. Harlan's allegations, she did not argue that the value of the business should be lower. Ms. Harlan specifically argued that the net worth of the business should be $279,262. (Appellee Apdx. IV, p.2).

Therefore, Mr. Harlan's argument that Ms. Harlan "agreed" with the changes made in valuing the business from the trial court's Ruling to the Findings drafted by Mr. Harlan is without merit. In addition, as there were no findings entered in regard to the trial court's order on Ms. Harlan's 60(b) motion, there were no facts to marshal in support of the absent findings.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING MS. HARLAN'S *PRO SE* MOTION FOR RELIEF FROM JUDGMENT OR ORDER.

First, Mr. Harlan again argues that Ms. Harlan and Mr. Drollinger (the C.P.A. who testified at trial as to the business valuation) "agreed that the debt amount in the Ruling was not correct." (Appellee Brf. P. 13). This statement is again made without any cite to the record or other support and such unsupported claims are without merit on appeal. See Ortiz, 782 P.2d at 962; Amica, 768 P.2d at 969. As addressed above, Ms. Harlan argued in her Response to Ruling that the valuation of the business in the Ruling was much lower than as established at trial by the evidence. In addition, Mr. Drollinger did not state that the debt amount in the Ruling was incorrect. No testimony

was offered on this issue subsequent to the Ruling being entered.

"A liberal standard for application of Rule 60(b) in divorce cases is justified by the doctrine of continuing jurisdiction that a divorce court has over its decrees. Clearly, a court should modify a prior decree when the interest of equity and fair dealing with the court and the opposing party so require." Boyce v. Boyce, 609 P.2d 928, 931 (Utah 1980).

> The allowance of a vacation of judgment is a creature of equity designed to relieve against harshness of enforcing a judgment, which may occur through procedural difficulties, the wrongs of the opposing party, or misfortunes which prevent the presentation of a claim or defense . . . . [e]quity considers factors which may be irrelevant in actions at law, such as unfairness of a party's conduct, his delay in bringing or continuing the action, the hardship in granting or denying relief. Warren v. Dixon Ranch Co., 260 P.2d 741, 742 (Utah 1953).

In addition, "[d]iscretion must be exercised in furtherance of justice and the court will incline toward granting relief in a doubtful case to the end that the party may have a hearing." Id. (quoting Warren, 260 P.2d at 743 (citation omitted).

In the present case, Ms. Harlan moved the court to set aside the decree because the decree and findings signed by the court, and drafted by Mr. Harlan, were drastically different from the Ruling entered by the trial court. In the Ruling, the trial court awarded Mr. Harlan $197,735 from the marital estate. The Ruling awarded Ms. Harlan $176,000, and the net difference in the

IRA Accounts, $14,176 plus $5,000 for the purchase of a reasonable automobile. This totals $195,176, or $2,559 less than what was awarded to the Mr. Harlan.

Mr. Harlan argues in his brief that the trial court used the incorrect amount of debt in valuing the business in it Ruling. (Appellee Brf. P. 14). This claim by Mr. Harlan is again made without any cite to the record. The Ruling used clear and precise language and reasoning in valuing the marital estate and dividing it nearly equally.

The Ruling plainly states that "[t]he Court, based upon a totality of the evidence, from an examination of the exhibits adduced and from the record determines that the value of the business is $195,735 and makes the following findings to support that conclusion . . . ." The findings submitted by Husband state that "[b]ased on the evidence received by the Court, the Court determines the value of that business to be $177,562.05." There was no hearing held on the differing Findings offered by both parties and, as evidenced by Mr. Harlan's complete lack of any cite to the record, there is no record which explains the trial court's dismissal of its own Ruling, and the reasoning in support thereof, in this matter. Mr. Harlan simply offers, as justification for the modification, that "[t]he correct amount of debt was $74,737.00." (Appellee Brf. 14).

It is undisputed that the trial court heard substantial

testimony and received evidence as to the valuation of the business. After hearing all of this testimony and considering all of the evidence, the trial court entered it's Ruling which unequivocally values the business at $195,735. No further testimony was given. No further evidence was admitted. However, the value of the business was modified by the findings submitted by Mr. Harlan to $177,562.05. A hearing should be held to determine why the carefully calculated and supported value of the business as clearly stated in the trial court's Ruling was modified by nearly $20,000 by the findings submitted by Mr. Harlan.

The changes from the trial court's well-reasoned and supported Ruling to the findings and decree can only be explained by mistake, inadvertence, surprise or excusable neglect. These changes substantially prejudiced Wife and created an unjust and unfair result requiring that the decree be set aside.

CONCLUSION

For the foregoing reasons, Ms. Harlan respectfully requests that this Court reverse the trial court's dismissal of Wife's Motion for Relief from Judgment and remand the matter with directions to the trial court to set aside the

decree. A decree should enter in conformity with the actual Ruling of the trial court.

RESPECTFULLY SUBMITTED this 12 day of October, 1999.

CORPORON & WILLIAMS, PC

MARY C. CORPORON
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing REPLY BRIEF OF APPELLANT were mailed, first class, postage prepaid, to:

CLARK B. ALLRED
MCKEACHNIE, ALLRED & MCCLELLAN
855 East 200 North (112-10)
Roosevelt, Utah 84066

on this 12 day of October, 1999.